

APPEAL NO. 021600
FILED AUGUST 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on June 5, 2002, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant has appealed these determinations on evidentiary sufficiency grounds and the respondent (carrier) has responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that on _____, he helped load freight into the baggage hold of an aircraft; that the aircraft's interior cargo loading mechanism was not working; and that he and his fellow cargo loaders had to manually push the large cargo bins into place. He said he went home when his shift ended and had no symptoms; that when he awoke the next morning, he felt tingling in his left hand; that the tingling spread to his left arm and shoulder; and that when he reported for work, he saw the company nurse, who thought he was having a heart attack and sent him to an emergency room. The claimant further stated that he was diagnosed with suspected ulnar nerve compression and referred to a neurologist; that he underwent several diagnostic tests and was eventually diagnosed with herniated discs in his neck; that he felt this condition was caused by the pushing and shoving of cargo bins he did at work, not only on _____, but for the previous 15 years. The carrier contended that the medical tests did not support an on-the-job injury. The hearing officer did not find credible the varying histories stated in the medical records in that some referred to a specific injury while others referred to repetitive motion injury. The hearing officer apparently noted as well the varying diagnoses including ulnar nerve compression, numerous cervical conditions, left shoulder impingement, and rule out carpal tunnel syndrome, contained in the records of the several doctors who treated him. Further, the claimant did not introduce the records of his current treating doctor, a chiropractor.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508

S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge